No. 403

Supreme Court of the United States

HENRY RAGONTON RABANG, *Petitioner.*

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization Service, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH DISTRICT

PETITION FOR REHEARING

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Petitioner prays that this court grant rehearing of its judgment and decision of May 27, 1957, affirming the judgment of the Court of Appeals for the Ninth Circuit in the above-entitled case.

REASONS FOR GRANTING REHEARING

The decision of the court in this case affirms an order for deportation to the Philippine Islands of a Filipino who came to this country as a United States national, and who has lived here continuously for the last twenty-seven years—the greater part of his life. The court has decided that despite his coming here as a national he "*entered* the continental United States for permanent residence" (Opinion, page 2). Because, as the court holds, petitioner became an alien on July 4, 1946, the date of Philippine Independence, he is held to have become deportable under a statute enacted on February 18, 1931, while he was still a non-deportable national.

It is petitioner's firm conviction that, notwithstanding, Congress did not intend, and could not have intended the act of February 18, 1931, to apply to persons of his class, namely, those who were nationals in 1931 and who remained such for fifteen years thereafter, regardless of their present status.

As in *Barber v. Gonzales*, 347 U. S. 637, the issue before the court was the intent of Congress. The court in *Barber* considered the intent of Congress as expressed in Section 19 of the act of February 5, 1917,[1] and held that because of the term "after entry" in section 19 there was no "Congressional intent" to make the statute applicable to Filipinos who had never *entered* the United States. In this case the court has decided that because the term "entry" was not explicitly used in the statute here involved, Congress in 1931 did not intend to limit the applicability of that statute to aliens who had *entered* the United States.

As was pointed out in the dissenting opinion of Mr. Justice Douglas, "without that condition [entry] the [1931] Act would have had no application whatsoever at the time of its passage for at that time every 'alien' was a national of another country who had 'entered' here."

A comparison of the 1922 amendment to the Jones-Miller Act with the provisions of the 1931 act indicates the probable reason for omission of the term "entry" from the latter act. The act of May 26, 1922, provides:

> "Any alien who at any time after his entry is convicted under subdivision (c) shall upon the

[1] 39 Stat. 889-891.

termination of the imprisonment imposed by the court upon such conviction and upon warrant issued by the Secretary of Labor, be taken into custody and deported in accordance with the provisions of sections 19 and 20 of the act of February 5, 1917. . . ."

The use of the term "at any time after his entry" in this act expresses the intent of Congress that it should be applicable only to offenses committed subsequent to the date of entry. The condition of the statute commences to operate at a particular point of time. That point of time is the date of the alien's "entry." In other words, the statute does not have the effect of making an alien deportable for a narcotics conviction prior to entry—though such a conviction might operate to render the alien excludable under other provisions of law.

The purpose of the 1931 act was to broaden "the statute to include every type of infraction of laws for the regulation of narcotics," *Dang Nam v. Bryan* (C. A. 9, 1934) 74 F. 2d 379.

The 1931 statute in explicit language adopts as the time of its operative effect the date of "the enactment of the Act." It states:

". . . any alien . . . who, *after the enactment of this Act,* shall be convicted and sentenced for violation or conspiracy to violate any statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves shall be taken into custody and deported in

manner provided in sections 19 and 20 of the act of February 5, 1917 . . . ."

Omitting discussion of other changes at this time, it is evident that the term "after the enactment of this act" was substituted for the term "after his entry." Insertion of the additional words "after entry" would have been both clumsy and meaningless for then the act would have read: " . . . any alien . . . who *after entry, and* after the enactment of this act," etc. Since, as has already been noted, the act was at the time applicable only to aliens who "had entered," i.e., *all aliens at that time,* the omission of the word "entry" in the 1931 statute can not signify any intent on the part of Congress to make the act prospectively applicable to resident Filipino nationals upon the future achievement of Philippine independence.

Nor is the substitution of the words in the 1931 act "shall be taken into custody and deported in manner provided in sections 19 and 20" for the words in the 1922 act "shall . . . be taken into custody and deported *in accordance with* the provisions of sections 19 and 20 . . ." of significance. There is nothing in the Congressional history of the act, or in the words used, to indicate that these two phrases are intended to have a different meaning. No such differentiation was drawn in any of the contemporary lower court opinions construing the two acts. *Hampton v. Wong Ging* (C. A. 9, 1924) 299 Fed. 289; *Weedin v. Moy Fat* (C. A. 9, 1925) 8 F. 2d 488; *United States v. Wing* (D. C., Nev., 1925) 6 F. 2d 896; *Dang Nam v. Bryan* (C. A. 9, 1934) 74 F. 2d 379, Cf. *United States ex rel. Grimaldi v. Ebey* (C. A. 7, 1926) 12 F. 2d 922; *Chung Que Fong v. Nagle*

(C. A. 9, 1926) 15 F. 2d 789: *United States ex rel. Spataro v. Day* (C. A. 2, 1928) 23 F. 2d 1005; *Todaro v. Munster* (C. A. 10, 1933) 62 F. 2d 963; *Shibata v. Tillinghast* (D. C., Mass., 1929) 31 F. 2d 801.

The 1931 act did not repeal the 1922 amendment to the Jones-Miller Act. The two acts remain as parallel statutes until the passage of the Immigration and Nationality Act of 1952.[2]

The construction of the statute involved in *Bugajewitz v. Adams*, 228 U. S. 585, involved an entirely different situation. The act of February 20, 1907,[3] provided that:

> "Sec. 3. . . . any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this Act."

This act was amended by the act of March 26, 1910.[4] The amendment, indicating deletions by bracketing the words deleted, and additions by italicizing, reads as follows:

> " . . . any alien [woman or girl] who shall be found an inmate of *or connected with the management* of a house of prostitution or practicing prostitution [within three years] after [she] *such alien* shall have entered the United States . . . shall be deemed to be unlawfully within the United States and shall be deported [as] *in the manner*

[2] Sec. 403 (a) (10), (31): 66 Stat. 166.

[3] 34 Stat. 898, 899.

[4] 36 Stat. 263, 265.

provided by sections twenty and twenty-one of this Act."

Thus after the amendment the statute read:

"Sec. 3. . . . any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States . . . shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections twenty and twenty-one of this Act."

Section 20 of the act of 1907[5] which was unchanged by the 1910 amendment read as follows:

" . . . any alien who shall enter the United States in violation of law . . . shall, upon warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States . . . "

It is apparent from the foregoing that the 1910 amendment of section 3 of the 1907 Act had as its specific objective the elimination of the three-year statute of limitation upon deportation of persons found to be practicing prostitution. The court considered whether the general language of reference to sections 20 and 21 could be construed as reincorporating into section 3 the very three-year statute of limitations which Congress had specifically stricken from the section. The court, construing the amendment, stated:

"We are of the opinion that the striking out of the three-year clause from section 3 is not changed by reference to sections 20 and 21. The *change in*

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[5] 34 Stat. 898, 904, 905.

phraseology of the reference indicates a narrowed purpose. The prostitute is to be deported not 'as provided' but 'in the manner provided' in sections 20 and 21. Those sections provide the means for securing deportation and it was still proper to point to them for that." [emphasis added.]

In the 1931 Act the Congress made no change in phraseology which would have indicated an intent to make the new statute applicable to persons who, though they had never entered as aliens, might in the future, by operation of law, become aliens. On the contrary, there is nothing in the legislative history of the act to indicate such an intent on the part of Congress.

The decision of this court affirms a judgment which approves the uprooting and expulsion of a man who came here as a United States national, and who has spent the major portion of his life in the United States. He has acquired ties of family, friends, community and culture which are far stronger today, when he is held to be an alien, than they were when he came here twenty-seven years ago as a United States national. The very circumstance of his long-held nationality, and continuing though (it is now held) mistaken belief that he was still a national at the time of his plea and sentencing for a narcotics offense was probably the cause of the deportation proceedings. For, had he known that he was an alien, subject to deportation, he would have availed himself of the opportunity to request a judicial recommendation against deportation under the provisions of section 19 of the 1917 Act. *Dang Nam v. Bryan*, 74 F. 2d 379. In view of the fact that the court regarded his offense as of such a minor

character as to suspend sentence, it is reasonably certain, that such a request would have been granted. Under these circumstances, petitioner submits that the court should reconsider this case, and resolve doubts concerning construction of the 1931 statute, which, in line with *Barber v. Gonzales*, 347 U. S. 637, would exempt former nationals from the penalty of deportation. *Fong Haw Tan v. Phelan*, 333 U. S. 6, 10.

CONCLUSION

For the foregoing reasons the petition for rehearing should be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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